LYNN H. GROOMS ET AL.

IBLA 86-55 Decided October 19, 1987

Appeal from decisions of the Wyoming State Office, Bureau of Land Management, rejecting mineral patent application and declaring placer mining claim null and void ab initio. W-96196; WMC-222122.

Affirmed.

1. Mining Claims: Lands Subject to -- Mining Claims: Location -- Mining Claims: Withdrawn Land -- Withdrawals and Reservations: Effect of -- Withdrawals and Reservations: Revocation and Restoration

   BLM properly declares a mining claim null and void ab initio and rejects a mineral patent application therefor when the evidence establishes the claim was located prior to revocation of a first-form reclamation withdrawal.

APPEARANCES: Lynn H. Grooms, pro se and for the other appellants.

OPINION BY ADMINISTRATIVE JUDGE ARNESS

Lynn H. Grooms, Sylvia I. Grooms, Kyna L. Grooms, and Anna Gail Grooms have appealed from two decisions of the Wyoming State Office, Bureau of Land Management (BLM), dated September 18, 1985, declaring the Dumbbell Mine No. 1 placer mining claim, WMC-222122, null and void ab initio and rejecting appellants' mineral patent application, W-96196.

On August 8, 1983, BLM received a copy of a notice of location for appellants' mining claim which is situated in sec. 8, T. 52 N., R. 101 W., sixth principal meridian, Park County, Wyoming. The notice of location stated that the claim had been located by appellants on July 22, 1983. In an August 4, 1983, letter accompanying the copy of the notice of location, Lynn H. Grooms stated that the location notice for the claim was at the Park County Courthouse "being recorded now." He further stated that the notice of location "[w]as left at the Park county Court House on the 22 Day of July, 1983 at about 8:00 a.m." On August 18, 1983, BLM received another copy of appellants' notice of location bearing the county clerk's stamp and a notation by the deputy county clerk that it was recorded on July 22, 1983, at 8 a.m. Appellants filed a mineral patent application for their mining claim with BLM on July 10, 1985.

In its September 1985 decisions, BLM declared appellants' mining claim null and void ab initio and rejected their mineral patent application because the claim had been "located" prior to 10 a.m. on July 22, 1983, at which time the land was closed to mineral entry by virtue of the Secretarial order of April 2, 1929, effecting a first-form reclamation withdrawal for the Shoshone Project. The withdrawal applied to all manner of "public entry." BLM noted that the land had then been opened to mineral entry as of 10 a.m. on July 22, 1983, pursuant to Public Land Order (PLO) No. 6401 (48 FR 29697 (June 28, 1983)).

In a statement of reasons for their appeal, appellants contend they relied on PLO No. 6401 to the extent it provided that "[a]ll applications received at or prior to 10 a.m. on July 22, 1983, shall be considered as simultaneously filed at that time." 48 FR 29697 (June 28, 1983). Appellants argue that, in view of the fact that PLO No. 6401 is a "defective order," BLM should either "reopen [the] land in question giving everybody an equal chance * * * or let our claim stand."

Appellants' argument is based on a misunderstanding of the provisions of PLO No. 6401. The PLO applied to two parcels of land. In regard to one, the Secretarial Order of 1929 was modified to permit the land's sale for expansion of the city of Cody, Wyoming. Regarding the other parcel, PLO No. 6401 revoked the 1929 Secretarial order which had withdrawn the land. Paragraph 3 of PLO No. 6401, which contains the language quoted by appellants, stated the land "shall be open to the operation of the public land laws generally." 48 FR 29697 (June 28, 1983). Paragraph 4 provided the land "will be open to location under the United States mining laws at 10 a.m. on July 22, 1983." Id.

A mining claim is not located by filing an application with the Federal Government but by complying with the requirements of Federal and state laws. See 30 U.S.C. §§ 22-54 (1982); Wyo. Stat. §§ 30-1-101 through 30-1-126 (Supp. 1983). 1/ Like other Western states, Wyoming requires

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1/ The distinction between applications and mining claims was discussed at some length in David W. Harper, 74 I.D. 141, (1967):

"The ordinary application to enter land under the various public land laws, or to lease land under the mineral leasing laws of the United States, imposes upon this Department the responsibility for determining whether the land can or should be disposed of pursuant to the particular law under which [the] application is filed, whether the applicant is qualified under that law to have his application approved, and, if the land is suitable and the applicant is qualified, whether one applicant is to be preferred over another equally qualified applicant in the event of competing applications. It is only after the Department has made these determinations that any rights in the land vest in an applicant. This is not true of the location of a mining claim. The locator of a mining claim does not file an application to locate a claim, and the acts required for the location of a claim do not include even notice to this Department. The location of a valid mining claim is, in effect, a grant from the United States, and, by the location of a valid

that mining claims be recorded with the local county recorder. Wyo. Stat. §§ 30-1-101, 30-1-110 (Supp. 1983). Since 1976 the Federal Government has also required locators to file a copy of their location certificates or notices with the state BLM office. 43 U.S.C. § 1744(b). Filing a copy of a location certificate or notice with BLM is not an application to enter land or locate a mining claim but notification of the fact that a claim has been located. See United States v. Locke, 471 U.S. 84, 86-87 (1985). The only application which is filed in regard to a mining claim is an application for a mineral patent. 30 U.S.C. § 29 (1982). Thus, the language quoted by appellants has no bearing on any issue as to the validity of their mining claim.

It is well established that a mining claim located at a time when the land encompassed by the claim is subject to a first-form reclamation withdrawal is null and void ab initio. William B. Rawlings, 85 IBLA 243 (1985), and cases cited therein. In the present case, the land encompassed by appellants' mining claim was subject to a first-form reclamation withdrawal for the Shoshone Project until the withdrawal was formally revoked at 10 a.m. on July 22, 1983. See Harold E. De Roux, 94 IBLA 350 (1986); Raymond D. Dilley, 87 IBLA 150 (1985). Thus, if appellants' mining claim was located prior to 10 a.m. on that date, it was null and void ab initio.

In its September 1985 decisions, BLM found that appellants' claim had been located prior to 10 a.m. on July 22, 1983. BLM apparently based this conclusion on the fact that the copy of the location notice filed with BLM indicated that it had been recorded with the county clerk at 8 a.m. on that date.

The Wyoming statute governing placer claims provides in part:

> (b) Before filing such location certificate, the discoverer shall locate his claim:
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> (i) By securely fixing upon such claim a notice in plain painted, printed or written letters, containing the name of the claim, the name of the locator or locators, the date of the discovery, and the number of feet or acres claimed;
>
> (ii) By designating the surface boundaries by substantial posts or stone monuments at each corner of the claim.

Wyo. Stat. § 30-1-110 (Supp. 1983). If appellants did not post a notice of location and designate the surface boundaries of the Dumbbell Mine No. 1 prior to recording their claim as required by the statute, no location was made and their claim is invalid. Zweifel v. State, 517 P.2d 493, 500 (Wyo.

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fn. 1 (continued)
claim, the locator is vested with a present right of possession without action on the part of this Department. * * * Thus, appellants' attempt to find an analogy in the premature location of a mining claim and the premature filing of an application to enter, or to obtain an interest in, land is without merit."

1974). United States v. Zweifel, 11 IBLA 53, 74-88, 80 I.D. 323, 333-39 (1973), aff'd sub nom. Roberts v. Morton, 389 F. Supp. 87, 94 (D. Colo. 1975), aff'd, 549 F.2d 158, 161-62 (10th Cir. 1977). The record does not suggest that appellants failed to perform the acts of location required by the statute. In fact, a handwritten note on both copies of the location notice filed with BLM states "7-22-83 posting time 12:05 A.M." Assuming appellants did post a notice and establish boundary monuments prior to recording their Dumbbell claim, these acts of location were necessarily performed prior to 8 a.m. July 22, 1983, when the land remained withdrawn under the Secretarial order of April 12, 1929. Consequently, the Dumbbell Mine No. 1 was null and void ab initio because it was located on withdrawn land. Harry A. Schultz, 61 I.D. 259 (1953).

[1] Thus, we conclude that BLM was correct in finding from the date and time appellants' mining claim was recorded that the claim had been located prior to 10 a.m. on July 22, 1983. Accordingly, we affirm BLM's determination that the Dumbbell Mine No. 1 placer claim was null and void ab initio due to its location on withdrawn land. In addition, because appellants' location was a nullity under the law, BLM properly rejected their mineral patent application. Nels Swanberg, 74 IBLA 249 (1983).

In their notice of appeal, appellants state that the "claim location notice was reposted at 10:00 A.M. on July 22, 1983." No argument is made based on this statement. The point of the assertion seems to be that appellants believe that if their claim was invalid when located, "reposting" after the withdrawal was revoked cured the invalidity. Such is not the case.

"The purpose of posting is to give notice to the public in general, and subsequent locators in particular, of the existence and extent of the locator's claim." 2 American Law of Mining § 33.03[1] (2d ed. 1984). Accord Rasmussen Drilling Inc. v. Kerr-McGee Nuclear Corp., 571 F.2d 1144, 1158 (10th Cir. 1978). When land is available for the location of mining claims, a posted location notice may be changed prior to recording the claim. See 2 American Law of Mining § 33.03[8] (2d ed. 1984). When a claim is recorded, the recorded location notice imparts constructive notice of the location. Globe Mining Co. v. Anderson, 78 Wyo. 17, 318 P.2d 373, 384 (1957). Nevertheless, posting a second copy of the notice of location would serve to help assure that a rival locator has actual as well as constructive notice, just as would maintaining the original notice. See 2 American Law of Mining, § 33.03[7] (2d ed. 1984). Appellants' mining claim was void ab initio due to its having been located at a time when the land was withdrawn from mineral entry. The revocation of the withdrawal did not revive the invalid location. Floyd W. McCarty, 28 IBLA 246 (1976); Frank Zappia, 10 IBLA 178 (1973). Nor could the act of "reposting" the notice recorded prior to the revocation of the withdrawal. The reposted notice would impart notice of the attempt to locate a claim which was null and void ab initio. Under Wyoming law acts of location must be completed prior to recordation. Because all acts were completed at a time when the land was withdrawn from entry, the second notice merely imparted notice of the existence of an invalid claim.

It is also possible that, had appellants realized their original location was void, they may have "reposted" in order to make a second location of the ground. 2/ Appellants have not asserted that they did so. Whatever the propriety of such a "reposting,c if any mining claim was thereby established, it was not the Dumbbell Mine No. 1 which had been recorded with Park County at 8 a.m. on July 22, 1983, and subsequently filed with BLM.

Our conclusions as to appellants' claim should come as no surprise to them. The order revoking the withdrawal of the land clearly stated:

> Appropriation of lands under the general mining laws prior to the date and time of restoration is unauthorized. Any such attempted appropriation, including attempted adverse possession under 30 U.S.C. Section 38, shall vest no rights against the United States.

48 FR 29697 (June 28, 1983). 3/ These sentences informed appellants, along with all other potential mineral locators, that no mining claim could be located prior to the revocation of the withdrawal and that attempts to appropriate the land by posting a location notice or monumenting a mining claim, as required by the Wyoming statute, would not result in the acquisition of any right to the land which could be asserted against the United States.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decisions appealed from are affirmed.

Franklin D. Arness
Administrative Judge

We concur:

Will A. Irwin
Administrative Judge

R. W. Mullen
Administrative Judge

2/ The act of "reposting" in this context is akin to an act of relocation. If the notice of location of the relocated mining claim was not recorded with the county and filed with BLM within 90 days from the date of relocation, the relocated claim would be deemed abandoned and void. See Todd Frederick & Sharon Frederick, 93 IBLA 289 (1986).

3/ We note that similar language has been included in BLM's final rules restating procedures for the segregation and opening of public lands. 52 FR 12171, 12176 (Apr. 15, 1987).